IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
WEDNESDAY, THE SIXTEENTH DAY OF JUNE
TWO THOUSAND AND FOUR
PRESENT
THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE
and
THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 11079 of 2003
And
W.P.M.P.NO.13840 OF 2003

Between:
1 S.L.V.Prasad s/o Late Sri Venkateshwar Rao,
aged about 40 years, occupation:business,R/o Plot No.43, Sarvasukhi Colony, West Marredpally,Secunderabad-26.
2 S.Sumathi Devi w/o Late Venkateshwar Rao,aged about 60 years,Occ;Housewife,R/o Plot No.43., Sarvasukhi Colony., West Marredpally., Secunderabad-26.
3 S.Bhavani Prasad s/o Late Sri Venkateshwar Rao,aged about 38 years,occ:business, R/o Plot No.43., Sarvasukhi Colony., West Marredpally., Secunderabad-26.
4 S.Pratibha d/o Late Sri Venkateshwar Rao,aged about 27 years, R/o Plot No.43.,Sarvasukhi Colony., West Marredpally., Secunderabad.
5 M.Raghu s/o Late M.Nageshwar Rao,aged about 38 years,occ;Business, R/o H.No.A-28., Journalist Colony., Jubilee Hills., Hyderabad.

..... PETITIONERS

AND

1 Union Of India, rep. by its Secretary Ministry of Finance, Jeevandeep Bldg.,
Sansad Marg., New Delhi.
2 The Prudential Co-operative Bank Ltd., Rashtrapathi Road., Secunderabad.,
Rep.by its Managing Director.,
3 The Assistant General Manager/Authorised Officer., The Prudential Co-op Bank Ltd.,Rastrapathi Road., Secunderabad.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a Writ, order or direction, more particularly one in the nature of Writ of Mandamus striking down the Securitisation and Reconstruction of Financial Assets and Enforcement of Security interest Act 2002 particularly Sections 13,15 and section 34 of the said Act and to set aside the

consequential impugned notice in Ref.No.PCB/RP/AR/ESI/ 185/03-04 dated 08-04-2003 issued by the 3rd respondent herein as unconstitutional and violative of Articles 14,19 and 21 of the Constitution of India.

AND
W.P.M.P.No.13840 OF 2003

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aged about 40 years, occupation:business,R/o Plot No.43, Sarvasukhi Colony, West Marredpally,Secunderabad-26.
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.....RESPONDENTS

Petition under Section 151 of C.P.C. praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to stay of all further proceedings including taking possession of secured immovable property in pursuance of the impugned notice in Ref.No.PCB/RP/AR/ESI/185/03-04 dated 8.4.2003 pending disposal of the writ
petition.

Counsel for the Petitioners in both:MR.P.KESAVA RAO

Counsel for the Respondent No.1 in both: Addl.Standing Counsel for Central Government.

Counsel for the Respondent No.2 & 3 in both: MR.S.ASHOK ANAND KUMAR

The Court made the following ORAL ORDER:

(Per Hon"ble The Chief Justice)

1 . In view of the decision rendered by the Hon'ble Supreme Court in Transfer Case (Civil) No.92-95 of 2002, dated 8th April, 2004 [MARDIA CHEMICALS LTD v UNION OF INDIA & ORS] upholding the constitutional validity of the provisions of the Securitisation And Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, barring sub-section (2) of Section 17 of the Act, which was declared as ultra vires of Article 14 of the Constitution of India, this petition deserves to be decided in terms of the said decision. The Supreme Court in MARDIA CHEMICALS case has held that before taking action by the Bank under the provisions of the Act, a notice of 60 days is required to be given by the bank and after the measures under Section 13 (2) of the Act have been taken, mechanism has been provided under Section 17 of the Act to approach Debts Recovery Tribunal. Supreme Court has further held thus:

> "1. Under sub-section (2) of Section 13 it is incumbent upon the secured creditor to serve 60 days notice before proceedings to take any of the measures as provided under sub-section (4) of Section 13 of the Act. After service of notice, if the borrower raises any objection or places facts for consideration of the secured creditor, such reply to the notice must be considered with due application of mind and the reasons for not accepting the objections, howsoever brief they may be, must be communicated to the borrower. In connection with this conclusion we have already held a discussion in the earlier part of the judgment. The reasons so communicated shall only be for the purposes of the information/knowledge of the borrower without giving rise to any right to approach the Debt Recovery Tribunal under Section 17 of the Act, at that stage.
>
> 2. As already discussed earlier, on measures having been taken under sub-section (4) of Section 13 and before the date of sale/auction of the property it would be open for the borrower to file an appeal (petition) under Section 17 of the Act before the Debt Recovery Tribunal.

3. That the Tribunal in exercise of its ancillary powers shall have jurisdiction to pass any stay/interim order subject to the condition as it may deem fit and proper to impose.

4. In view of the discussion already held on this behalf, we find that the requirement of deposit of 75% of amount claimed before entertaining an appeal (petition) under Section 17 of the Act is an oppressive, onerous and arbitrary condition against all the canons of reasonableness. Such a condition is invalid and it is liable to be struck down.

5. As discussed earlier in this judgment, we find that it will be open to maintain a civil suit in civil court, within the narrow scope and on the limited grounds on which they are permissible, in the matters relating to an English mortgage enforceable without intervention of the court."

2. In view of the decision of the Supreme Court upholding constitutional validity of the offending provisions of the Act, we dismiss the writ petition thereby reserving liberty to the petitioner to work out his/its remedies as provided under the Act including filing of appeal under Section 17 of the Act within the period of limitation prescribed therefor, to be counted from today.

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3. In view of the dismissal of the writ petition, the interim directions stand vacated and the WPMP stands disposed of as such.

Dated: 16th June, 2004.
pnb

sd/-

ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To:

1. The Secretary, Union of India, Ministry of Finance,Jeevandeep Buildings,Sansad Marg., New Delhi.
2. The Managing Director, The Prudential Co-operative Bank Ltd., Rashtrapathi Road, Secunderabad.
3. The Assistant General Manager/Authorised Officer, The Prudential Co-op. Bank Ltd., Rashtrapathi Road, Secunderabad.

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